

**SLICE SETTLEMENT AGREEMENT REGARDING
DEFERRAL OF INVESTOR OWNED UTILITY MONETARY BENEFIT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PEND OREILLE COUNTY PUD NO. 1**

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Exhibit A Payment Calculation Examples

This SLICE SETTLEMENT AGREEMENT REGARDING DEFERRAL OF INVESTOR OWNED UTILITY MONETARY BENEFIT (Slice Settlement Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and PEND OREILLE COUNTY PUD NO. 1 (Pend Oreille). Pend Oreille is a public utility district organized under the laws of the State of Washington. BPA and Pend Oreille are sometimes referred to in the singular as “Party” or in the plural as “Parties.”

RECITALS

Implementation of the Stipulation (as defined below) will, among other matters, (1) settle certain litigation pending in the Ninth Circuit Court of Appeals, Case Nos. 01-70002, 01-70003, 01-70005, 01-70008, 01-70009, 01-70010, 01-70012, 01-70014, 01-70020,

01-70041, 01-70042, and 01-70060 (the "Settled Litigation"), among BPA and certain of its customers; (2) reduce the payments BPA must make to certain investor owned utility customers and thereby reduce BPA's business and financial risks and costs during the remaining years of this rate period (*i.e.*, Contract Years 2004 through 2006); and (3) result in a dismissal of certain litigation also pending in the Ninth Circuit Court of Appeals, Case Nos. 00-70949 and 01-70202, challenging the legality of BPA's contracts for the sale of the Slice Product. For and in partial consideration of Pend Oreille's forbearance from seeking judicial review of the Stipulation (and the Settlement Documents, as such term is defined in the Stipulation), its covenant not to sue over this Slice Settlement Agreement, and the performance by BPA and by Pend Oreille of the mutual promises set out herein, BPA and Pend Oreille make this Slice Settlement Agreement.

The Parties agree:

1. EFFECTIVE DATE AND TERM; TERMINATION

- (a) Subject to the provisions of section 1(c) below, this Slice Settlement Agreement shall, upon execution and delivery by BPA and Pend Oreille, become effective as of the Effective Date (as such term is defined in the Stipulation), and shall continue in effect until the earlier of September 30, 2011, or the date upon which the last payment required pursuant to this Slice Settlement Agreement has been made.
- (b) The Parties' rights and obligations under this Slice Settlement Agreement will only become effective in the event that the Administrator implements the "Adjustments to FY2004 SN CRAC Percentage Increase" as described in section 6 of the Stipulation (Settlement Rates).
- (c) If the Settlement Rates are not implemented by the Administrator on or before April 1, 2004, then in that event this Slice Settlement Agreement shall be null and void, and of no force or effect, and shall terminate automatically, with the consequence that, among other things, neither BPA nor Pend Oreille will be obligated to make the payments separately required by this Slice Settlement Agreement, or otherwise perform any other obligation pursuant to this Slice Settlement Agreement.

2. DEFINITIONS

Any term using initial capitalization in this Slice Settlement Agreement which is not otherwise defined herein, shall have the meaning given such term in the body of the Block and Slice Power Sales Agreement (as defined below).

- (a) "Administrator" means the BPA Administrator.
- (b) "Amendment to Existing Settlement Agreement" shall have the meaning given such term in the Stipulation.
- (c) "Annual Deferral Amount" shall have the meaning given such term in the Settlement Amendments.

- (d) “Block and Slice Power Sales Agreement” or “Slice Agreement” means Contract No. 00PB-12174 executed by BPA and Pend Oreille.
- (e) “Deferral Account” shall have the meaning given such term in the Amendment to Existing Settlement Agreements.
- (f) “Existing Settlement Agreements” shall have the meaning given such term in the Stipulation.
- (g) “Factor” means the decimal calculated pursuant to the following formula:

$$\text{Factor} = \frac{X}{Y}$$

Where

X is Pend Oreille’s Initial Critical Slice Amount in average annual megawatts; and

Y is the sum of the firm loads forecast to be served under the Priority Firm Power (including Full Service, Partial Service, Slice, Block and PF Exchange), Industrial Firm Power, New Resource Firm Power, and Residential Load Firm Power Rates, or their successor rates, all as set forth in the final Wholesale Power Rate Development Study Documentation which are used to set such rates in a General Rate Proceeding for the applicable rate period and submitted to FERC. If the 2,200 average megawatt amount converted to Monetary Benefits pursuant to the Settlement Amendments is not included in such forecast, then such 2,200 average megawatt amount will be added to the forecasted loads for purposes of determining the Factor. The average megawatt amounts for Y will be the average annual amounts for each rate period. For example, if a General Rate Proceeding is for a 2-year period, then Y will be a 2-year average megawatt amount. The Factor applies only to the payments made pursuant to sections 6, 7, and 8 below during Contract Years 2007 through 2011.

- (h) “FASB 71 Treatment” means the circumstances where BPA has determined, and such determination has been approved by BPA’s external auditor, that the Annual Deferral Amounts qualify for accounting treatment provided under the provisions of Financial Accounting Standards Board (FASB), Statement of Financial Accounting Standard 71, Accounting for the Effects of Certain Types of Regulation, and that such treatment will be applied. The results of such FASB 71 Treatment are described in section 3(a) below.
- (i) “General Rate Proceeding” means a proceeding conducted by BPA pursuant to section 7(i) of the Northwest Power Act during which all adjustable firm power rates under which BPA sells wholesale power, including without limitation rates formulated pursuant to sections 7(b), 7(c), and 7(f) of the

Northwest Power Act, are subject to revision and all major rate elements (such as revenue requirement and cost allocation) are subject to review and revision, and which is not conducted pursuant to BPA's rules for expedited proceedings.

- (j) "Investor-Owned Utilities" or "IOUs" means Puget Sound Energy, Inc., PacifiCorp, Portland General Electric, Avista Corporation, Idaho Power Company, and NorthWestern Corporation, and their successors or assigns.
- (k) "Litigation Settlement ROD" means the Administrator's Record of Decision titled "Litigation Settlement Including Slice Settlement Agreements and Investor-Owned Utilities' Amended Residential Exchange Program Settlement Agreements."
- (l) "Monetary Benefit" shall have the meaning given such term in the Existing Settlement Agreements.
- (m) "Slice Customers" means those customers, including Pend Oreille, that are purchasing the Slice Product.
- (n) "Stipulation and Agreement for Settlement" or "the Stipulation" means the agreement among BPA and other parties, BPA Contract No. 04PB-11417.

3. SCOPE OF SLICE SETTLEMENT AGREEMENT

Sections 3(a) and 3(b) below describe the treatment of Annual Deferral Amounts with and without FASB 71 Treatment and in the absence of this Slice Settlement Agreement. Section 3(c) describes the purpose of this Slice Settlement Agreement, which is to more closely match the change in the timing of payments to the IOUs pursuant to the Settlement Amendments.

- (a) The Parties understand that under the Slice Agreement, the Slice Rate Methodology and the Slice Rate, the deferral amounts are included in the monthly Slice Rate, and if the Annual Deferral Amounts are accorded FASB 71 Treatment, then (1) such Annual Deferral Amounts would not be included in Actual Slice Revenue Requirement for Contract Years 2004 through 2006 with the consequence that Pend Oreille would not pay for its share of the Annual Deferral Amounts associated with the Slice Product in those years once the True-up Adjustment Charge has been billed or credited; and (2) such Annual Deferral Amounts would be included in the Slice Revenue Requirement and Actual Slice Revenue Requirement for Contract Years 2007 through 2011, with the consequence that Pend Oreille would pay for its share of the Annual Deferral Amounts associated with the Slice Product in such Contract Years.
- (b) The Parties further understand that under the Slice Agreement, the Slice Rate Methodology and the Slice Rate, if the Annual Deferral Amounts are not accorded FASB 71 Treatment, then (1) such Annual Deferral Amounts would be included in Actual Slice Revenue Requirement for Contract Years

2004 through 2006, with the consequence that Pend Oreille would pay for its share of the Annual Deferral Amounts associated with the Slice Product in those years; and (2) such Annual Deferral Amounts would not be included in Slice Revenue Requirement and Actual Slice Revenue Requirement for Contract Years 2007 through 2011, with the consequence that Pend Oreille, having already paid its share of the Annual Deferral Amounts in Contract Years 2003 through 2006, would not pay a share of the Annual Deferral Amounts associated with the Slice Product in those years.

- (c) The consequences of the treatment described in section 3(a) are that the Slice Customers do not receive the benefits of the Annual Deferral Amounts on a monthly basis, but rather after the Contract Year is over. The consequences of the treatment described in section 3(b) is that the Slice Customers make payment to BPA years before BPA makes payments to the IOUs, which is a different treatment than the rates for non-Slice customers. Given these consequences, the Slice Customers that are litigants would not agree to the Stipulation, and as a result there would be no settlement.

The Parties intend with this Slice Settlement Agreement to secure for the Slice Customers the general benefits and obligations comparable to those that will be received by non-Slice customers under rate schedules applicable to them as a result of the Stipulation and the Settlement Documents. With regard to the Slice Product, the Parties intend that such general benefits and obligations be secured by this Slice Settlement Agreement in a manner consistent with the Slice Agreement, Slice Rate Methodology and Slice Rate, while at the same time recognizing that separate, independent consideration supports the promises made in this Slice Settlement Agreement. Furthermore, the Parties intend and agree that this Slice Settlement Agreement, operating independently in conjunction with the Slice Agreement, the Slice Rate Methodology, and the Slice Rate, shall neither double charge nor double credit the Slice Customers for any amount related to the Monetary Benefit or related interest, and, in the event that one Party claims that a double charge or double credit is occurring, the Parties shall negotiate in good faith to resolve the matter prior to resorting to other dispute resolution mechanisms.

This Slice Settlement Agreement contains terms and conditions, including those requiring Pend Oreille and BPA to make payments to each other at specified times, that implement provisions of the Stipulation and the Settlement Documents, reflect a compromise of disputed claims and defenses, and fulfill the mutual desire of BPA and such customers to end this litigation and avoid the costs, risks and uncertainties posed by the litigation to BPA and all of its customers.

4. FURTHER UNDERSTANDINGS

The Parties recognize that the purpose of this section 4 is to document the application of the current Slice Rate, and does not constitute a change to the Slice Agreement, Slice Rate Methodology, or the Slice Rate. The Parties understand and

agree that Pend Oreille is paying its Selected Slice Percentage of the following annual amounts of Monetary Benefit during the CY2002 through CY2006 period:

- (a) \$69,725,000 of Monetary Benefit to the IOUs as reflected in the Slice Revenue Requirement during each Contract Year for the CY2002 through CY2006 period; and
- (b) \$78,051,600 of additional Monetary Benefit to the IOUs as collected in the line item on monthly Slice Expedited Bills during each Contract Year for the CY2002 through CY2006 period, as specified in the WP-02 General Rate Schedule Provisions, section X, page 30.

The Parties further understand and agree that the calculation of the True-up Adjustment Charge following each Contract Year during the CY2002 through CY2006 period will recognize the total annual amount of Monetary Benefit payments to the IOUs (\$69,725,000 + \$78,051,600 = \$147,776,600) of which Pend Oreille is paying its Selected Slice Percentage. The True-up Adjustment Charge calculation following each Contract Year for the CY2002 through CY2006 period will reflect the difference between the actual expenses associated with the Monetary Benefit payments to the IOUs and \$147,776,600.

5. APPLICATION OF SLICE SETTLEMENT AGREEMENT

This Slice Settlement Agreement applies only to Pend Oreille's purchase of the Slice Product under the Slice Agreement, and does not encompass or apply to Pend Oreille's payment for purchase of the Block Product under such Slice Agreement.

6. DEFERRAL AMOUNTS ACCORDED FASB 71 TREATMENT

If Annual Deferral Amounts are accorded FASB 71 Treatment, then BPA will promptly provide Pend Oreille written notice of such treatment and: (i) section 7 will not apply; (ii) the Annual Deferral Amounts will be treated as described in section 3(a) above; and (iii) the Parties shall make additional payments as set forth below. Exhibit A sets forth sample calculations for sections 6(a) and 6(b).

(a) Payments During Contract Years 2004 through 2006

(1) Annual Payment Amount Formula

Payment Amount = A x C

Where

A is the sum of the Annual Deferral Amounts for all the IOUs in each Contract Year during the CY03 through CY06 period.

C is Pend Oreille's Selected Slice Percentage expressed as a decimal, which is equal to 0.003819.

(2) **Payments During Contract Year 2004**

For Contract Year 2004, commencing with the March 2004 Expedited Bill, BPA will pay Pend Oreille each month an amount equal to the sum of the Payment Amounts for CY03 and CY04, divided by 7, which payment will be reflected as a separate line item credit on Pend Oreille's Expedited Bill for each month in CY04 commencing with the March 2004 Expedited Bill. Pend Oreille will pay BPA an amount equal to the sum of the Payment Amounts for CY03 and CY04 less \$40,627 (\$10,638,158 multiplied by Pend Oreille's Selected Slice Percentage), which will be reflected as a separate line item payment on the Pend Oreille September 2004 Expedited Bill.

(3) **Payments During Contract Years 2005 through 2006**

For each Contract Year during the CY05 through CY06 period, BPA will pay Pend Oreille each month during each such Contract Year an amount equal to the Payment Amount for each such Contract Year divided by 12, which payment will be reflected as a separate line item credit on Pend Oreille Expedited Bill for each month during such period. Pend Oreille will pay BPA an amount equal to the Payment Amount for each such Contract Year, which payment will be reflected as a separate line item payment on each of Pend Oreille's September Expedited Bills for Contract Year 2005 and Contract Year 2006.

(4) **Additional Payment for Contract Years 2005 and 2006**

Pend Oreille will pay to BPA in each of the September Expedited Bills for CY05 and CY06 an amount equal to the product of Pend Oreille's Selected Slice Percentage and the amounts withdrawn by BPA from Portland General Electric's Deferral Account during each such Contract Year.

(b) **Payments During Contract Years 2007 through 2011**

(1) **Annual Payment Amount Formula**

Payment Amount = $A \times (C - B)$

Where

A is the sum of the amounts withdrawn by BPA for payment to the IOUs from the Deferral Accounts of all the IOUs in each Contract Year during the CY07 through CY11 period.

B is the Factor for the applicable rate period.

C is Pend Oreille's Selected Slice Percentage expressed as a decimal, which is equal to 0.003819.

(2) **Monthly Payment Amounts**

For any Contract Year during the period CY07 through CY11, if the Payment Amount for that Contract Year is a positive number, BPA will pay Pend Oreille each month during that Contract Year an amount equal to the Payment Amount for that Contract Year divided by 12. Conversely, if the Payment Amount for a Contract Year is a negative number, Pend Oreille will pay BPA each month during such Contract Year an amount equal to the absolute value of the Payment Amount divided by 12. Each monthly payment made by BPA to Pend Oreille will be reflected as a separate line item credit, and each monthly payment to be made by Pend Oreille to BPA will be reflected as a separate line item payment. The applicable line item for each Contract Year will be reflected on the Expedited Bill for each month during such Contract Year.

7. **DEFERRAL AMOUNTS NOT ACCORDED FASB 71 TREATMENT**

If Annual Deferral Amounts are not accorded FASB 71 Treatment, then BPA will promptly provide Pend Oreille written notice of such treatment, and: (i) section 6 will not apply; (ii) the Annual Deferral Amounts will be treated as described in section 3(b) above; and (iii) the Parties shall make additional payments as set forth below. Exhibit A sets forth sample calculations for sections 7(a) and 7(b).

(a) **Payments During Contract Years 2004 through 2006**

(1) **Annual Payment Amount Formula**

Payment Amount = $A \times C$

Where

A is the sum of the Annual Deferral Amounts for all of the IOUs in each Contract Year during the CY03 through CY06 period.

C is Pend Oreille's Selected Slice Percentage expressed as a decimal, which is equal to 0.003819.

(2) **Payments During Contract Year 2004**

For Contract Year 2004, commencing with the March 2004 Expedited Bill, BPA will pay Pend Oreille each month an amount equal to the sum of the Payment Amounts for CY03 and CY04 divided by 7. Each monthly payment by BPA to Pend Oreille will be reflected as a separate line item credit on the Expedited Bill for each month during CY04.

(3) **Payments During Contract Years 2005 through 2006**

For each Contract Year during the period CY05 through CY06, BPA will pay Pend Oreille each month an amount equal to the Payment Amount for each such Contract Year divided by 12. Each monthly

payment by BPA to Pend Oreille will be reflected as a separate line item credit on the Expedited Bill for each month during such period.

- (4) **Additional Payment for Contract Years 2005 and 2006**
Pend Oreille will pay to BPA in each of the September Expedited Bills for CY05 and CY06 an amount equal to the product of Pend Oreille's Selected Slice Percentage and the amounts withdrawn by BPA from Portland General Electric's Deferral Account during each such Contract Year.

(b) **Payments To BPA During Contract Years 2007 Through 2011**

- (1) **Annual Payment Amount Formula**
Payment Amount = $A \times B$

Where

A is the sum of the amounts withdrawn by BPA for payment to the IOUs from the Deferral Accounts of all of the IOUs in each Contract Year during the CY07 through CY11 period.

B is the Factor for the applicable rate period.

- (2) **Monthly Payment Amounts**
For each Contract Year during the period CY07 through CY11, Pend Oreille will pay BPA each month an amount equal to the Payment Amount for each such Contract Year divided by 12. Each monthly payment by Pend Oreille to BPA will be reflected as a separate line item payment on the Expedited Bill for each month during such Contract Year.

8. DEFERRALS TERMINATED PRIOR TO SEPTEMBER 30, 2006

If the deferral of Monetary Benefit under the Settlement Amendments is terminated prior to September 30, 2006, then BPA will promptly provide Pend Oreille written notice, stating the month of such termination (Termination Month).

If the Termination Month occurs prior to September 30, 2006, it is the purpose of this section 8 to ensure that in conjunction with the independent operation of the Slice Agreement, the Slice Rate, and the Slice Rate Methodology, the payments made by Pend Oreille to BPA associated with the Slice Product will match in amount and timing Pend Oreille's share of BPA's repayment of Annual Deferral Amounts to the IOUs pursuant to the Settlement Amendments.

If such Termination Month occurs prior to September 30, 2006, then in that event, except as otherwise provided in this section 8, the provisions of sections 6 and 7 will not apply and this section 8 shall govern the payment obligations of Pend Oreille and BPA.

(a) **Deferrals Terminated With FASB 71 Treatment**

If the deferral of Monetary Benefit under the Settlement Amendments is terminated on or before September 30, 2006, and the associated Annual Deferral Amounts have received FASB 71 treatment, then the following provisions will apply:

(1) **Termination and Resulting Payments During Contract Year 2004**

If the Termination Month occurs in CY04, payments made by BPA to Pend Oreille for the CY04 Payment Amount pursuant to section 6(a) will be terminated commencing with the month following the Termination Month, but payments for CY03 Payment Amount pursuant to section 6(a) will continue through CY04. Payments by Pend Oreille to BPA pursuant to section 6(a) reflected on Pend Oreille September 2004 Expedited Bill will be limited to the sum of the amounts paid by BPA to Pend Oreille during CY04, less \$40,627 (Pend Oreille's Selected Slice Percentage multiplied by \$10,638,158).

(2) **Termination and Resulting Payments During Contract Years 2005 through 2006**

If the Termination Month occurs in CY05 or CY06, payments made by BPA to Pend Oreille pursuant to section 6(a) will be terminated commencing with the month following the Termination Month. Payments by Pend Oreille to BPA pursuant to section 6(a) during the Contract Year in which the Termination Month occurred will be limited to the sum of the amounts credited by BPA to the Customer during such Contract Year.

(3) **Payments During Contract Years 2007 through 2011**

For each Contract Year during the period of CY07 through CY11 period, payments will be made as follows:

(A) **Annual Payment Amount Formula**

$$\text{Payment Amount} = A \times (C-B)$$

Where

A is the sum of the amounts withdrawn by BPA for payment to the IOUs from the Deferral Accounts of all the IOUs in each Contract Year during the CY07 through CY11 period.

B is the Factor for the applicable rate period.

C is Pend Oreille's Selected Slice Percentage, expressed as a decimal, which is equal to 0.003819.

(B) Monthly Payment Amounts

For any Contract Year during the period CY07 through CY11, if the Payment Amount for that Contract Year is a positive number, BPA will pay Pend Oreille each month during that Contract Year an amount equal to the Payment Amount for that Contract Year divided by 12. Conversely, if the Payment Amount for any Contract Year of such period is a negative number, Pend Oreille will pay BPA each month during that Contract Year an amount equal to the absolute value of the Payment Amount divided by 12. Each monthly payment made by BPA to Pend Oreille will be reflected as a separate line item credit, and each monthly payment to be made by Pend Oreille to BPA will be reflected as a separate line item payment. The applicable line item for each Contract Year will be reflected on the Expedited Bill for each month during such Contract Year.

(b) Deferrals Terminated Without FASB 71 Treatment

If the deferral of Monetary Benefits under the Settlement Amendments is terminated prior to September 30, 2006, and such Annual Deferral Amounts have not received FASB 71 treatment, then the payments by BPA to Pend Oreille pursuant to section 7(a) above will be terminated commencing with the month following the Termination Month and the following provisions will apply:

(1) Termination and Resulting Payments Specific To Contract Year 2004

If the Termination Month occurs in CY04, payments made by BPA to Pend Oreille for the CY04 Payment Amount pursuant to section 7(a) will be terminated commencing with the month following the Termination Month, but payments for CY03 Payment Amount pursuant to section 7(a) will continue.

(2) Termination and Resulting Payments During Contract Years 2004 through 2006

If the Termination Month occurs during the CY2004 through CY2006 period, starting with the month in CY2004, CY2005, or CY2006 first following the Termination Month through September 30, 2006, the following shall apply:

(A) Annual Payment Amount

Payment Amount = $A \times C$

Where:

A is the sum of the amounts withdrawn by BPA for payment to the IOUs from the Deferral Accounts of all the IOUs in each Contract Year during the CY04 through CY06 period.

C is Pend Oreille's Selected Slice Percentage, stated as a decimal, which is equal to 0.003819.

(B) Monthly Payment Amounts

For each Contract Year during the CY04 through CY06 period, Pend Oreille shall pay BPA each month an amount equal to the Payment Amount for each such Contract Year divided by 12. Each monthly payment by Pend Oreille to BPA will be reflected as a separate line item payment on the Expedited Bill for each month during such Contract Year.

(3) Payments During Contract Years 2007 through 2011

For each Contract Year during the CY07 through CY11 period, Pend Oreille will make payments to BPA as follows:

(A) Annual Payment Amount Formula

Payment Amount = $A \times B$

Where

A is the sum of the amounts withdrawn by BPA for payment to the IOUs from the Deferral Accounts of all the IOUs in each Contract Year during the CY07 through CY11 period.

B is the Factor for the applicable rate period.

(B) Monthly Payment Amounts

For each Contract Year during the CY07 through CY11 period, Pend Oreille will pay BPA each month during each Contract Year an amount equal to the Payment Amount divided by 12. Each monthly payment made by Pend Oreille to BPA will be reflected as a separate line item payment on the Expedited Bill for each month during such Contract Year.

9. INTEREST PAYMENT

In any Contract Year in the CY2003 through CY2011 period during which interest related to the Deferral Accounts is expensed in the Actual Slice Revenue Requirement and paid under this Slice Settlement Agreement, BPA will pay Pend Oreille an amount equal to the product of Pend Oreille's Selected Slice Percentage and the interest accrued on the Deferral Accounts during each Contract Year. This will avoid charging Pend Oreille twice for interest accrued in the Deferral Accounts (once in the Actual Slice Revenue Requirement and also in payments to BPA under this Slice Settlement Agreement). Payment by BPA will be reflected as a separate line item credit on the September Expedited Bill for each Contract Year except that the CY03 payment (if any) will be reflected on the September 2004 Expedited Bill. For example, if the Annual Deferral Amounts were not accorded FASB 71

Treatment, then BPA would record interest expense in each Contract Year for the CY07 through CY11 period, as well as charge Slice Customers an interest component on principal amounts withdrawn from the Deferral Accounts, and BPA would therefore make this payment to Pend Oreille.

10. PAYMENT OF SEPARATE LINE ITEMS

The separate line items included in any Expedited Bill pursuant to sections 6, 7, 8, and 9 of this Slice Settlement Agreement shall be deemed to be part of such Expedited Bills. The payment and dispute resolution provisions of the Slice Agreement will be utilized to determine disputes over the separate line items included in any Expedited Bill pursuant to sections 6, 7, 8, and 9 of this Slice Settlement Agreement. Such separate line items (a) are independent of the Slice Agreement, Slice Rate and Slice Rate Methodology, and (b) are not part of or subject to any right of Pend Oreille to conduct an audit under section 4 of the Slice Agreement. This in no way changes or diminishes any Party's audit rights under section 4(b)(6)(D) of the Slice Agreement.

11. NO EFFECT ON SLICE AGREEMENT OR DISPUTES RELATING THERETO

Payments made by BPA to Pend Oreille and by Pend Oreille to BPA under this Slice Settlement Agreement are for purposes of settlement of litigation and for implementation of such settlement. BPA and Pend Oreille intend and agree that neither the Litigation Settlement ROD, nor this Slice Settlement Agreement, any language or terms defined within it, payments made under it, nor any other action taken pursuant to this Slice Settlement Agreement (a) constitute either a change in the Slice Rate, the Slice Rate Methodology, or the Slice Agreement, or (b) have any effect, evidentiary or otherwise, on the meaning of the Slice Rate, the Slice Rate Methodology or the Slice Agreement, or any of their terms or conditions, or any matters now, or which may in the future become, subject to dispute under any of them. The Parties agree that any payments made by either Party hereunder do not affect any costs or obligations under the Slice Rate, the Slice Rate Methodology or under any other contract or the Slice Agreement, and that a rate proceeding pursuant to section 7(i) of the Northwest Power Act is not necessary, and will not be conducted, to implement this Slice Settlement Agreement. Nothing in this section 11 shall apply to resolving disputes arising under this Slice Settlement Agreement.

12. BREACH OF SLICE SETTLEMENT AGREEMENT

In the event that either BPA or Pend Oreille fails to perform any payment obligation under this Slice Settlement Agreement, then the non-defaulting Party shall serve a written notice on the defaulting Party stating the nature of the default, and the defaulting Party shall have 20 working days to cure the default. In the event that the default remains uncured after the expiration of such 20-working-day period, BPA and Pend Oreille specifically agree that the Party in default shall pay to the non-defaulting Party an amount of liquidated damages equal to the total of amount of net payments that would have been made to the non-defaulting Party under this Slice Settlement Agreement had such failure to perform not occurred. Such amount shall be immediately due and owing, upon the written demand from

the non-defaulting Party to the defaulting Party. Such written demand shall state that such amount shall be payable either (a) in equal monthly payments during the remaining term of this Slice Settlement Agreement; or (b) 20 days after receipt by the defaulting Party of such written demand. If the defaulting Party fails to pay the non-defaulting Party within the payment period set forth in such written demand, the non-defaulting Party may seek a default judgment and order from a court of competent jurisdiction ordering payment of the liquidated damages specified in this section together with interest. This in no way limits any other rights and remedies of the Parties in the event of breach under this Slice Settlement Agreement.

13. COVENANT

Other than as allowed by section 12, neither BPA nor Pend Oreille will take action, or assert a position, interpretation or policy, in any forum or proceeding that would have the effect of requiring Pend Oreille or BPA to pay amounts owed under this Slice Settlement Agreement, in a manner that differs, in either amount or timing, from the payments required by Pend Oreille and BPA pursuant to this Slice Settlement Agreement. For example, BPA will not include directly or indirectly in any Actual Slice Revenue Requirement, Slice Revenue Requirement, True-Up Adjustment Charge, or Individual Charges the payments made by BPA to Pend Oreille pursuant to sections 6, 7, 8 and 9 above. Similarly, for example, if the Annual Deferral Amounts have been accorded FASB 71 Treatment, Pend Oreille will not assert in any forum or proceeding that amounts related to repayment of the Deferral Accounts should not be fully included in the CY07 through CY11 Slice Revenue Requirement.

14. SEVERABILITY OF SLICE SETTLEMENT AGREEMENT AND PORTIONS THEREOF

- (a) This Slice Settlement Agreement is severable from the Stipulation and the Settlement Documents, and shall remain in effect even if the Stipulation or any or all of such other related Settlement Documents are held to be void, unenforceable, or unlawful after the 120th day after the Effective Date.
- (b) If a court of competent jurisdiction issues a final, nonappealable order that holds any provision of this Slice Settlement Agreement to be void, unenforceable, or unlawful, in that event it is the intent of the Parties that section 4 of this Slice Settlement Agreement shall remain in effect and apply to the maximum extent permitted by law.

15. ACTIONS UPON FINDING OF INVALIDITY

If a court of competent jurisdiction finally determines, after all requests for reconsideration and all appeals, that this Slice Settlement Agreement, or any part thereof, is unlawful, void, or unenforceable, then the Parties agree to negotiate in good faith either (a) new provisions that will replace those held to be unlawful, void or unenforceable; or (b) a new agreement to replace in its entirety this Slice Settlement Agreement, with the objective of placing the Parties in the same situation as applied prior to such final determination by such court.

16. STANDARD PROVISIONS

(a) Amendments

No oral or written amendment, rescission, waiver, modification or other change of this Slice Settlement Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

(b) Information Exchange and Confidentiality

The Parties shall provide each other with any information that is reasonably required, and requested by either Party in writing, to operate under and administer this Slice Settlement Agreement, including information needed to resolve payment disputes. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Slice Settlement Agreement, then that Party shall endeavor to obtain whatever consents, releases or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to BPA which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and BPA shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. BPA shall only disclose information received under this provision to BPA employees who need the information for purposes of this Slice Settlement Agreement.

(c) Entire Agreement

This Slice Settlement Agreement, including all provisions, exhibits incorporated as part of this Slice Settlement Agreement, and documents incorporated by reference, constitutes the entire agreement between the Parties regarding the subject matter of this Slice Settlement Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Slice Settlement Agreement.

(d) Exhibits

Exhibit A is incorporated into this Slice Settlement Agreement by reference. Exhibit A may only be revised upon mutual agreement between the Parties. The body of this Slice Settlement Agreement shall prevail over Exhibit A in the event of a conflict.

(e) No Third-Party Beneficiaries

This Slice Settlement Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a

direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Slice Settlement Agreement.

(f) **Waivers**

Any waiver at any time by either Party to this Slice Settlement Agreement of its rights with respect to any default or any other matter arising in connection with this Slice Settlement Agreement shall not be considered a waiver with respect to any subsequent default or matter.

17. NOTICES

Any notice required under this Slice Settlement Agreement shall be in writing and shall be delivered: (a) in person; (b) by a nationally recognized delivery service; or (c) by United States Certified Mail. Notices are effective when received. Either Party may change its address for notices by giving notice of such change consistent with this section.

If to Pend Oreille:

Pend Oreille County PUD No. 1
130 N. Washington Avenue
Newport, WA 99156
Attn: Mr. Robert D. Geddes
General Manager
Phone: 509-447-3137
FAX: 509-447-5824
E-Mail: bgeddes@popud.com

If to BPA:

Bonneville Power Administration
707 West Main Avenue, Suite 500
Spokane, WA 99201-0641
Attn: Carol S. Hustad
Account Executive
Phone: 509-358-7431
Fax: 509-353-2892
E-Mail: cshustad@bpa.gov

18. SIGNATURES

Each signatory represents that he or she is authorized to enter into this Slice Settlement Agreement on behalf of the Party for whom he or she signs.

PEND OREILLE COUNTY PUD NO. 1

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By /s/ _____

Name _____
(Print/Type)

Name Paul E. Norman
(Print/Type)

Title _____

Title Senior Vice President, Power
Business Line

Date _____

Date October 21, 2003

(hq5f01\Slice\IOU Deferral\Slice IOU Deferral Pend Oreille 12253.doc)10/20/03

EXHIBIT A
PAYMENT CALCULATION EXAMPLES

Note: The examples in this Exhibit A are for illustrative purposes only.

1. Payment Calculation Examples Under Sections 6(a), 7(a), and 7(b).

- Assumes Annual Deferral Amounts credited to Deferral Accounts of \$55 million in CY2003, \$75 million in CY 2004, \$75 million in CY 2005 and \$75 million in CY 2006.
- Assumes amounts withdrawn from Deferral Accounts of \$60 million per year CY 2007-11.
- Assumes Customer Selected Slice Percentage =.05

Example 1

Section 6(a) With FASB 71 Treatment of Deferrals

Monthly Payments from BPA to Customer:

CY 2004 = $\$130,000,000 \times .05 / 7 \text{ months} = \$928,571$ (for the combined CY2003 and CY2004 deferrals)

CY 2005 = $\$75,000,000 \times .05 / 12 \text{ months} = \$312,500$

CY 2006 = $\$75,000,000 \times .05 / 12 \text{ months} = \$312,500$

Annual Payments from Customer to BPA:

CY 2004 = $\$5,968,089$ ($\$928,571 \times 7 \text{ months} \text{ minus } \$10,638,158 \times .05$)

CY 2005 = $\$3,750,000$ ($\$312,500 \times 12 \text{ months}$)

CY 2006 = $\$3,750,000$ ($\$312,500 \times 12 \text{ months}$)

Example 2

Section 7(a) Without FASB 71 Treatment of Deferrals

Monthly Payments from BPA to Customer:

CY 2004 = $\$130,000,000 \times .05 / 7 \text{ months} = \$928,571$ (for the combined CY2003 and CY2004 deferrals)

CY 2005 = $\$75,000,000 \times .05 / 12 \text{ months} = \$312,500$

CY 2006 = $\$75,000,000 \times .05 / 12 \text{ months} = \$312,500$

Example 3

Section 7(b) Without FASB 71 Treatment of Deferrals

Monthly Payments from Customer to BPA:

CY 2007-11 = $\$250,000$ ($\$60 \text{ million} / 12 \text{ months} \times .05 \text{ or Factor if different from Selected Slice Percentage}$)

2. Payment Calculation Examples Under Section 6(b)

Example 1

- Assumes 7,070 average megawatts of BPA firm load
- Assumes Withdrawals from Deferral Accounts of \$60 million for each Contract Year 2007-2011
- Customer Selected Slice Percentage = .05
- Customer Initial Critical Slice Amount = 354 average megawatts

Payment Amount = $((.05 - (354 \text{ aMW}/7070 \text{ aMW})) * \$60 \text{ million})/12$

Payment Amount = $((.05 - .05) * \$60 \text{ million})/12$

Payment Amount = $(0 * \$60 \text{ million})/12$

Payment Amount = \$0

In this example,

No money is paid out by BPA to the Customer or by the Customer to BPA.

Example 2

- Assumes 5,000 average megawatts of BPA firm load
- Assumes Withdrawals from Deferral Accounts of \$60 million for each Contract Year 2007-2011
- Customer Selected Slice Percentage = .05
- Customer Initial Critical Slice Amount = 354 average megawatts

Payment Amount = $((.05 - (354 \text{ aMW}/5000 \text{ aMW})) * \$60 \text{ million})/12$

Payment Amount = $((.05 - .0708) * \$60 \text{ million})/12$

Payment Amount = $((-.0208) * \$60 \text{ million})/12$

Payment Amount = - \$0.104 million

In this example,

The Customer pays BPA \$0.104 million each month for CY 2007-2011

Example 3

- Assumes 10,000 average megawatts of BPA firm load
- Assumes Withdrawals from Deferral Accounts of \$60 million for each Contract Year 2007-2011
- Customer Selected Slice Percentage = .05
- Customer Initial Critical Slice Amount = 354 average megawatts

Payment Amount = $((.05 - (354 \text{ aMW}/10000 \text{ aMW})) * \$60 \text{ million})/12$

Payment Amount = $((.05 - .0354) * \$60 \text{ million})/12$

Payment Amount = $(.0146 * \$60 \text{ million})/12$

Payment Amount = \$0.073 million

In this example,

BPA pays the Customer \$0.073 million each month for CY 2007-2011